(45)

21/11/07

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 6844 of 2007

PETITIONER D.L. Divyakar,s/o Late Shri L.R. Divyakar, aged about 48 years Lecturer, Government Boys Higher Secondary School, Jashpur Nagar, Distt. Jashpur (CG).

Versus

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Scheduled Caste & Scheduled Tribe Welfare Department, Mantralaya, Raipur (C.G)
2. The Commissioner, Tribal Welfare Department, Raipur
3. The Principal, Govt. Boys Higher Secondary School, Jashpur, Distt. Jashpur (C.G).
4. Assistant Commissioner, Tribal Welfare Department, Jashpur (C.G).
5. Shri B.K. Rajput, Assistant Commissioner, Tribal Welfare Department, Jashpur (C.G).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri J.K.Shastri, , counsel for the petitioner.

Shri Ajay Dwivedi, P.L. appears for the for the State/ respondents on advance copy.

ORAL ORDER
(20.11.2007)

SUNIL KUMAR SINHA, J

Heard on admission.

The petitioner, who is working on the post of lecturer in Govt. Boys Higher Secondary School, Jashpur Nagar, Distt. Jashpur, has been transferred to Lundra, Distt. Surguja by order dated 7.7.2007. Earlier, this order was challenged before this Court vide W.P.(S) No. 4431/2007 and the said writ petition was withdrawn on 02.8.2007 making statement that the petitioner will file a representation before the concerned authority. Learned counsel for the petitioner submits that thereafter representation was filed on 10.8.2007 but no decision has been taken on the said representation till date.

As far as the merits of the case is concerned, learned counsel for the petitioner argues that on account of allegations of some irregularities, two annual increments with non-cumulative effect were withheld by the concerned authority by order dated 11.5.2007 (Annexure P-6) and thereafter the petitioner has been transferred, therefore, the order is mala-fide. On being pointedly asked from learned counsel for the petitioner that since when the petitioner is posted at Jashpur, he submits that presently he is not in a position to make statement in this regard but the petitioner is posted there prior to 3 years.

So far as the merits of the case are concerned, these are not the grounds for interfering with the order of transfer of an employee who holds a transferable post. Transfer is an incidence of service. No person working on a transferable post can claim to be posted at a particular place. It is for the employer to see that who should be posted where in the interest of better functioning of the department as also in the public interest. It is the settled view of the Apex Court that unless the order of transfer is vitiated by malafides or extraneous consideration or is against any statutory Rules or Act, the same cannot be interfered by a Court of Law.

Learned counsel for the petitioner could not point out any ground of malafide, extraneous considerations or violation of any statutory rules or the Act.

The petition deserves to be dismissed. It is accordingly dismissed. However, in the facts and circumstances of the case since a representation was filed by the petitioner after the earlier order dated 2.8.2007 passed by this Court and the same has not been disposed of so far, it is directed that the concerned authority shall dispose of the said representation filed by the petitioner at the earliest.

With the above observations, this petition stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/